

## **REMARKS**

The present Amendment is in response to the Final Office Action. Claims 6 and 12-15 are canceled, claims 1 and 8 are amended, and new claims 25 and 26 are added. Claims 16-24 have been withdrawn by the Examiner as being directed to an unelected invention. Claims 1-5, 7-11, 25, and 26 are now pending in view of the above amendments.

Reconsideration of the application is respectfully requested in view of the following remarks. For the Examiner's convenience and reference, Applicants remarks are presented in the order in which the corresponding issues were raised in the Office Action.

### **I. General Considerations**

Applicants note that the remarks presented herein have been made merely to clarify the claimed embodiments from elements purported by the Examiner to be taught by the cited references. Such remarks, or a lack of remarks, are not intended to constitute, and should not be construed as, an acquiescence, on the part of the Applicants: as to the purported teachings or prior art status of the cited references; as to the characterization of the cited references advanced by the Examiner; or as to any other assertions, allegations or characterizations made by the Examiner at any time in this case. Applicants reserve the right to challenge the purported teaching and prior art status of the cited references at any appropriate time.

In addition, the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration, by the Applicants, of additional or alternative distinctions between the claims of the present application and the references cited by the Examiner, and/or the merits of additional or alternative arguments.

### **II. Claim Objections**

The Examiner has objected to claims 1-7 based on purported informalities. While Applicant has submitted no comments herein responsive to the allegations and assertions advanced by the Examiner in connection with that objection, Applicant notes that in view of the

fact that claim 6, the apparent basis for the objection, has been canceled herein, the objection is now moot.

### **III. Rejection Under 35 U.S.C. §102(b)**

Applicants respectfully note that a claim is anticipated under 35 U.S.C. § 102(b) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Further, the identical invention must be shown in as complete detail as is contained in the claim. Finally, the elements must be arranged as required by the claim. *Manual of Patent Examining Procedure* (“MPEP”) § 2131.

The Examiner has rejected claims 1-3, 5-10, 12, and 14-15 under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 5,668,663 to Varaprasad et al. (“*Varaprasad*”) and has also rejected claims 1-4 and 7-13 under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 6,193,378 to Tonar et al. (“*Tonar*”). Applicants respectfully disagree but submit that the rejection is moot in light of the discussion set forth below.

#### **a. claims 1-7**

Claim 6 been canceled herein and the rejection of that claim has thus been rendered moot and should be withdrawn.

By this paper, claim 1 has been amended to recite in part “...an attenuation layer disposed between said first electrically conductive layer and said second electrically conductive layer, said attenuation layer comprising an at least partially cured photopolymerizable monomer, an electrolyte and an electrochromic material, the photopolymerizable monomer bonding the electrolyte and electrochromic material to each other...” Support for this amendment can be found in the application at, for example, paragraph [045]. In contrast, the Examiner has not established that the cited references teach or suggest this limitation in combination with the other limitations of claim 1. In this regard, Applicant notes that the Examiner appears to have taken the position that the “photopolymerizable element” purportedly disclosed in *Varaprasad* is subsumed within the “electrolyte” purportedly disclosed in that reference. Particularly, the Examiner has stated that “The electrolyte material [of *Varaprasad*] is comprised of ... alkali ions ... wherein one of the alkali ions may be...[a photopolymerizable element].” If this

understanding is incorrect, Applicant respectfully requests that the Examiner provide suitable clarification.

For at least the foregoing reasons, Applicant respectfully submits that the Examiner has failed to establish that the cited reference anticipates claim 1, and the rejection of claim 1, as well as the rejection of corresponding dependent claims 2, 3, 5 and 7, should accordingly be withdrawn.

**b. claims 8–15**

Claims 12-15 have been canceled herein and the rejection of those claims has thus been rendered moot and should be withdrawn.

By this paper, claim 8 has been amended to recite in part “...an attenuation layer disposed between said first plate and said second plate, said attenuation layer comprising an electrochromic material, a guest-host electrolyte, and an at least partially curable photopolymerizable monomer, wherein said electrochromic material and said guest-host electrolyte form a first layer and a second layer, respectively, of said attenuation layer, and said first and second layers being bonded to each other by the photopolymerizable monomer...” Support for this amendment can be found in the application at, for example, paragraph [045]. In contrast, the Examiner has not established that the cited references teach or suggest this limitation in combination with the other limitations of claim 8.

For at least the foregoing reasons, Applicant respectfully submits that the Examiner has failed to establish that the cited reference anticipates claim 8, and the rejection of claim 8, as well as the rejection of corresponding dependent claims 9-11 should accordingly be withdrawn.

**IV. New Claims**

Applicants note that new claims 25 and 26 have been added herein. Support for these new claims can be found at least in paragraphs [046] to [055] of the specification, and Figures 3a and 3b. Because each of these claims depends from claim 1, Applicants respectfully submit that each of these new claims is allowable at least because claim 1 is allowable, as discussed in sections II and III above.

### **CONCLUSION**

In view of the remarks submitted herein, Applicants respectfully submit that each of the claims 1-5, 7-11, 25 and 26 now pending in this application is in condition for allowance. Therefore, reconsideration of the rejections is requested and allowance of those claims is respectfully solicited. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate the same with the undersigned attorney.

Dated this 3<sup>rd</sup> day of May 2007.

Respectfully submitted,

/Peter F. Malen, Jr./

PETER F. MALEN JR.  
Registration No. 45,576  
Attorney for Applicant  
**Customer No. 022913**  
Telephone: (801) 533-9800